

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 124

HOUSE BILL 2150

AN ACT

AMENDING SECTIONS 41-353, 41-355, 41-364, 41-365 AND 41-368, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-370; RELATING TO ELECTRONIC NOTARY PUBLIC.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-353, Arizona Revised Statutes, is amended to
3 read:

4 41-353. Appointment; term; oath and bond; duties

5 A. The secretary of state may appoint electronic notaries public to
6 hold office for four years.

7 B. The secretary of state shall prescribe the application form for an
8 electronic notary. Applicants shall submit the application to the secretary
9 of state with a filing fee, a bond and a bond filing fee as prescribed by
10 rule by the secretary of state.

11 C. The materials and methods for creating notary service electronic
12 certificates and any other encryption based technologies used by an
13 electronic notary shall have a maximum useful life of two years and shall not
14 exceed the life of the electronic notary commission.

15 D. An electronic notary public is a public officer commissioned by
16 this state and the following apply without regard to whether the electronic
17 notary public's employer or any other person has paid the fees and costs for
18 the commissioning of the electronic notary public, including costs for the
19 materials and methods employed with the electronic notary token and the
20 materials and methods for creating notary service electronic certificates and
21 journals:

22 1. All of the following remain the property of the electronic notary:

23 (a) The materials and methods employed with and solely for the
24 electronic notary token.

25 (b) The materials and methods used solely for creating notary service
26 electronic certificates.

27 (c) Any journals containing only public information record entries.

28 2. Notwithstanding paragraph 1 of this subsection, an electronic
29 notary does not gain ownership or presumptive access rights to any of an
30 employer's assets or resources that are used or are usable for a purpose
31 other than electronic notarial acts.

32 3. An electronic notary may perform electronic notarizations outside
33 the workplace of the electronic notary's employer except during those times
34 normally designated as the electronic notary's hours of duty for that
35 employer. All fees received by an electronic notary for electronic notarial
36 services provided while not on duty remain the property of the electronic
37 notary.

38 4. An employer of an electronic notary shall not limit the electronic
39 notary's services to customers or other persons designated by the employer.

40 E. An electronic notary public shall continue to serve until the
41 electronic notary's commission expires, the electronic notary resigns the
42 commission, the electronic notary dies or the secretary of state SUSPENDS OR
43 revokes the commission. An employer shall not cancel the electronic notary
44 bond or electronic notary commission of any electronic notary who is an
45 employee and who leaves that employment.

1 F. An electronic notary shall comply with all of the following:

2 1. Be at least eighteen years of age.

3 2. Be a resident of this state for income tax purposes and claim the
4 individual's residence in this state as the individual's primary residence on
5 state and federal tax returns.

6 3. Except as provided in section 41-368, subsection A, paragraph 2,
7 never have been convicted of a felony.

8 4. KEEP AS A REFERENCE A MANUAL THAT IS APPROVED BY THE SECRETARY OF
9 STATE AND THAT DESCRIBES THE DUTIES, AUTHORITY AND ETHICAL RESPONSIBILITIES
10 OF ELECTRONIC NOTARIES PUBLIC.

11 G. An applicant for appointment and commission as an electronic notary
12 shall complete an application form prescribed by the secretary of state.
13 Except for the applicant's name, physical business address, electronic
14 business address and business telephone number, all other information on the
15 application is confidential and shall not be disclosed to any person other
16 than the applicant, the applicant's personal representative or an officer or
17 employee of the federal government or this state or its political
18 subdivisions who is acting in an official capacity. The secretary of state
19 shall use the information contained on the application only for carrying out
20 the purposes of this article.

21 H. The state or any of its political subdivisions may pay the fees and
22 costs for the commissioning of an electronic notary who is an employee of
23 this state or any of its political subdivisions and performs electronic
24 notarial services in the course of the electronic notary's employment or for
25 the convenience of public employees.

26 Sec. 2. Section 41-355, Arizona Revised Statutes, is amended to read:

27 41-355. Duties: electronic notarization in presence of
28 electronic notary

29 A. Electronic notaries public shall perform the following electronic
30 notarial acts when requested:

31 1. Take electronic acknowledgments.

32 2. Administer oaths and affirmations relating to electronic documents
33 and electronic notarial acts.

34 3. Perform jurats relating to electronic documents and electronic
35 notarial acts.

36 4. Educate notary service electronic signature certificate applicants
37 about the responsibilities and consequences of the use of the certificate.

38 5. Administer an oath or affirmation that the notary service
39 electronic signature certificate applicant understands the responsibilities
40 and consequences of using a notary service electronic signature certificate
41 to sign a notary service electronic document and that the electronic
42 signature certificate has the same legal force and effect as any notarial act
43 made before a notary public pursuant to article 2 of this chapter.

1 6. Register the notary service electronic signature certificate
2 applicant for the issuance of a notary service electronic signature
3 certificate that has a maximum useful life of two years.

4 B. A notarized electronic document that is completed in the presence
5 of an electronic notary consists of the following:

- 6 1. A complete electronic document.
7 2. A signature or mark that is affixed to the document by the signer.
8 3. A time and date statement that is contained within the electronic
9 notary token.

10 4. An electronic notary token that is affixed by the electronic notary
11 to the document.

12 C. On completion of the notarized electronic document, any change to
13 any of the elements prescribed in subsection B OF THIS SECTION invalidates
14 the notarized electronic document.

15 D. An electronic notary public shall:

16 1. Keep, maintain and protect as a public record a journal of all
17 official acts performed by the notary as prescribed in section 41-360 41-361
18 and in the form prescribed by the secretary of state.

19 2. Provide and keep the materials and processes to create an
20 electronic notary token as approved by the secretary of state.

21 3. Authenticate with the electronic notary token all official acts and
22 affix the date of the expiration of the notary's commission as an electronic
23 notary on every document that the electronic notary electronically signs.

24 4. RESPOND TO ANY REQUESTS FOR INFORMATION AND COMPLY WITH ANY
25 INVESTIGATIONS THAT ARE INITIATED BY THE SECRETARY OF STATE OR THE OFFICE OF
26 THE ATTORNEY GENERAL.

27 Sec. 3. Section 41-364, Arizona Revised Statutes, is amended to read:

28 41-364. Change of address; lost or stolen electronic journal or
29 seal; civil penalty

30 A. Within thirty days after the change of an electronic notary's
31 mailing, residential or electronic address, the electronic notary shall
32 deliver to the secretary of state, by certified mail or other means providing
33 a receipt, a signed notice of the change that provides both the old and new
34 addresses.

35 B. Within ten days after the loss or theft of an official journal or
36 any materials or processes used in creating an electronic notary token or
37 registering notary service electronic certificate applicants, the electronic
38 notary shall deliver to the secretary of state, by certified mail or other
39 means providing a receipt, a signed notice of the loss or theft. The
40 electronic notary also shall inform the appropriate law enforcement agency in
41 the case of theft.

42 C. If an electronic notary fails to comply with subsection A or B, THE
43 ELECTRONIC NOTARY HAS FAILED TO FULLY AND FAITHFULLY DISCHARGE THE DUTIES OF
44 AN ELECTRONIC NOTARY AND the secretary of state may impose against the
45 electronic notary a civil penalty in an amount the secretary of state

1 prescribes by rule. The electronic notary shall pay any civil penalty
2 imposed by the secretary of state pursuant to this subsection before the
3 renewal of the notary's commission.

4 Sec. 4. Section 41-365, Arizona Revised Statutes, is amended to read:

5 41-365. Name change; new commission; failure to comply

6 A. An electronic notary whose name changes shall apply for new methods
7 and materials issued to the electronic notary to create electronic notary
8 tokens under the new name.

9 B. AN ELECTRONIC NOTARY SHALL NOTIFY THE SECRETARY OF STATE WITHIN
10 THIRTY DAYS AFTER THE NOTARY'S CHANGE OF NAME. IF THE ELECTRONIC NOTARY
11 FAILS TO COMPLY WITH THIS SUBSECTION, THE ELECTRONIC NOTARY HAS FAILED TO
12 FULLY AND FAITHFULLY DISCHARGE THE DUTIES OF AN ELECTRONIC NOTARY.

13 Sec. 5. Section 41-368, Arizona Revised Statutes, is amended to read:

14 41-368. Grounds for refusal, suspension or revocation of
15 commission

16 A. The secretary of state may refuse to appoint any person as an
17 electronic notary public or may SUSPEND OR revoke the commission of any
18 electronic notary public for any of the following reasons:

19 1. Substantial and material misstatement or omission in the
20 application for an electronic notary public commission that is submitted to
21 the secretary of state.

22 2. Conviction of a felony unless restored to civil rights, or of a
23 lesser offense involving moral turpitude or of a nature that is incompatible
24 with the duties of an electronic notary public. A conviction after a plea of
25 no contest is deemed to be a conviction for purposes of this paragraph.

26 3. Revocation, suspension, restriction or denial of a professional
27 license if that action was for misconduct, dishonesty or any cause that
28 substantially relates to the duties or responsibilities of an electronic
29 notary public.

30 4. Failure to discharge fully and faithfully any of the duties or
31 responsibilities required of an electronic notary public.

32 5. The use of false or misleading advertising in which the electronic
33 notary public has represented that the electronic notary public has duties,
34 rights or privileges that the electronic notary public does not possess by
35 law.

36 6. Charging more than the fees authorized by statute or rule.

37 7. The commission of any act involving dishonesty, fraud or deceit
38 with the intent to substantially benefit the electronic notary public or
39 another person or to substantially injure another person.

40 8. Failure to complete the electronic acknowledgment or electronic
41 jurat at the time the electronic notary's signature and seal are affixed to
42 the document.

43 9. Failure to administer the oath or affirmation required at the time
44 of performing an electronic jurat for an individual.

1 10. Execution of any electronic notarial certificate by the electronic
2 notary public containing a statement known by the electronic notary public to
3 be false.

4 11. The return for insufficient funds or any other reason for
5 nonpayment of a check issued for fees to the secretary of state.

6 12. NOTARIZING A DOCUMENT THAT DOES NOT CONTAIN A NOTARIAL CERTIFICATE.

7 B. If an application is denied, the secretary of state shall notify
8 the applicant within thirty days after receipt of the application and shall
9 state the reasons for the denial.

10 C. THE SECRETARY OF STATE MAY SUSPEND THE COMMISSION OF AN ELECTRONIC
11 NOTARY FOR AT LEAST THIRTY DAYS AND FOR NOT MORE THAN ONE HUNDRED EIGHTY
12 DAYS.

13 D. IF A PERSON HAS HAD AN ELECTRONIC NOTARY COMMISSION IN THIS STATE
14 REVOKED, THE SECRETARY OF STATE MAY REFUSE TO APPOINT THE PERSON AS AN
15 ELECTRONIC NOTARY FOR FOUR YEARS AFTER THE DATE OF THE REVOCATION.

16 ~~E.~~ E. On revocation OR SUSPENSION of an electronic notary public's
17 commission, the secretary of state shall give notice to the electronic notary
18 public and shall provide the person with notice of the opportunity for a
19 hearing on the revocation OR SUSPENSION PURSUANT TO CHAPTER 6, ARTICLE 10 OF
20 THIS TITLE. The revocation OR SUSPENSION of an electronic notary public
21 commission is an appealable agency action.

22 Sec. 6. Title 41, chapter 2, article 3, Arizona Revised Statutes, is
23 amended by adding section 41-370, to read:

24 41-370. Complaints; investigations; failure to respond

25 A. ANY PERSON MAY MAKE A COMPLAINT TO THE OFFICE OF THE SECRETARY OF
26 STATE REGARDING AN ELECTRONIC NOTARY. THE SECRETARY OF STATE SHALL RECEIVE
27 ANY COMPLAINTS AND SHALL PROVIDE NOTICE OF THOSE COMPLAINTS TO THE OFFICE OF
28 THE ATTORNEY GENERAL. THE OFFICE OF ATTORNEY GENERAL SHALL INVESTIGATE AND
29 TAKE ACTION ON ALL COMPLAINTS INVOLVING ANY ALLEGATION OF A VIOLATION OF THIS
30 ARTICLE.

31 B. AN ELECTRONIC NOTARY'S FAILURE TO RESPOND TO AN INVESTIGATION IS A
32 FAILURE BY THE NOTARY TO FULLY AND FAITHFULLY DISCHARGE THE RESPONSIBILITIES
33 AND DUTIES OF AN ELECTRONIC NOTARY.

APPROVED BY THE GOVERNOR APRIL 18, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.

Passed the House February 7, 2005,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting



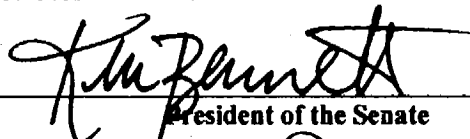
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 12, 2005,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting



President of the Senate

Charmion B. Bunting
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13th day of April, 2005

at 12:00 o'clock P. M.

Wendell Upshaw
Secretary to the Governor

Approved this 18 day of

April, 2005,

at 145 o'clock P. M.

Jon R. R.
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of April, 2005,

at 4:42 o'clock P. M.

Janice K. Brewer
Secretary of State